

## STATEMENT OF FACTS

Your affiant, Brandon Merriman, is a Special Agent with the Federal Bureau of Investigation and has been so employed since January 2016. Currently, I am tasked with investigating criminal activity in and around the U.S. Capitol grounds on January 6, 2021. As a Special Agent, I am authorized by law or by a Government agency to engage in or supervise the prevention, detention, investigation, or prosecution of violations of Federal criminal laws.

The U.S. Capitol is secured 24 hours a day by U.S. Capitol Police. Restrictions around the U.S. Capitol include permanent and temporary security barriers and posts manned by U.S. Capitol Police. Only authorized people with appropriate identification were allowed access inside the U.S. Capitol. On January 6, 2021, the exterior plaza of the U.S. Capitol was also closed to members of the public.

On January 6, 2021, a joint session of the United States Congress convened at the United States Capitol, which is located at First Street, SE, in Washington, D.C. During the joint session, elected members of the United States House of Representatives and the United States Senate were meeting in separate chambers of the United States Capitol to certify the vote count of the Electoral College of the 2020 Presidential Election, which had taken place on November 3, 2020. The joint session began at approximately 1:00 p.m. Shortly thereafter, by approximately 1:30 p.m., the House and Senate adjourned to separate chambers to resolve a particular objection. Vice President Mike Pence was present and presiding, first in the joint session, and then in the Senate chamber.

As the proceedings continued in both the House and the Senate, and with Vice President Mike Pence present and presiding over the Senate, a large crowd gathered outside the U.S. Capitol. As noted above, temporary and permanent barricades were in place around the exterior of the U.S. Capitol building, and U.S. Capitol Police were present and attempting to keep the crowd away from the Capitol building and the proceedings underway inside.

At such time, the certification proceedings were still underway and the exterior doors and windows of the U.S. Capitol were locked or otherwise secured. Members of the U.S. Capitol Police attempted to maintain order and keep the crowd from entering the Capitol; however, shortly around 2:00 p.m., individuals in the crowd forced entry into the U.S. Capitol, including by breaking windows and by assaulting members of the U.S. Capitol Police, as others in the crowd encouraged and assisted those acts.

Shortly thereafter, at approximately 2:20 p.m. members of the United States House of Representatives and United States Senate, including the President of the Senate, Vice President Mike Pence, were instructed to—and did—evacuate the chambers. Accordingly, the joint session of the United States Congress was effectively suspended until shortly after 8:00 p.m. Vice President Pence remained in the United States Capitol from the time he was evacuated from the Senate Chamber until the sessions resumed.

During national news coverage of the aforementioned events, video footage which appeared to be captured on mobile devices of persons present on the scene depicted evidence of

violations of local and federal law, including scores of individuals inside the U.S. Capitol building without authority to be there.

On January 7 and 8, 2021, the FBI received multiple tips indicating James Matthew Horning (Horning) was inside the U.S. Capitol on January 6, 2021. Specifically, on January 7, 2021, a witness (W-1) contacted and provided the FBI with a video that W-1 had viewed on social media. The individual who posted the video included the caption “in case you ever wandered (sic) who my father is” (see Figure 1). The video is of an individual wearing a bright orange colored beanie style hat and a turquoise colored bandana around his neck, taking a selfie style video of himself smoking an unknown substance and saying “Fuck it, smoking a joint on the Capitol steps right now.” The account that posted the video has a username that, according to open source records, is the first name of a daughter of Horning.



*Figure 1*

On January 8, 2021, a second witness (W-2), who stated he has known Horning since high school, contacted the FBI and indicated Horning was one of the protestors inside the U.S. Capitol on January 6, 2021. W-2 stated that a video in which Horning appears to be smoking a joint outside the U.S. Capitol was posted to the Facebook account W-2 associates with Horning. W-2 provided the FBI with screenshots from the Facebook account “Matt Horning.” One of the screenshots W-2 provided the FBI from the “Matt Horning” Facebook account is from a video and is the same individual pictured in Figure 1 above (see Figure 2). The “Matt Horning” Facebook account also uses a profile picture that appears to be a picture of Horning.



*Figure 2*

A second screenshot W-2 provided to the FBI from the “Matt Horning” Facebook account was a post commenting on the events of January 6, 2021. The post from the “Matt Horning” Facebook account stated, “To anyone on my list who has a problem with what happened in DC today.. I am damn proud I was there. If you have a problem with that, hit the inbox if you want.. or use the unfriend feature if you ain’t bout it. Those of you calling for an investigation, why don’t you try investigating deez nuts with ya chin” (see Figure 3).

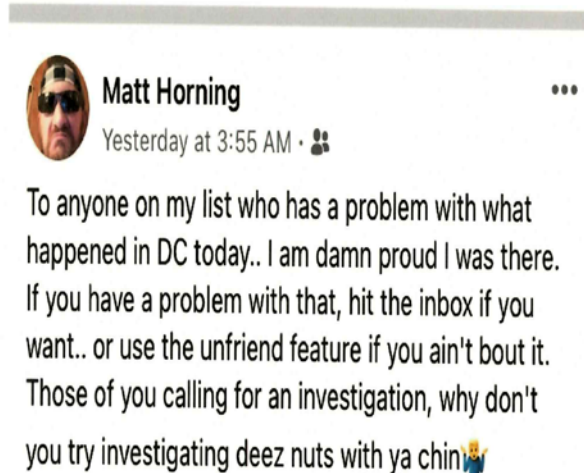


Figure 3

A third screenshot that W-2 provided to the FBI from the “Matt Horning” Facebook account was a post containing five videos with the caption “Videos from DC” (see Figure 4). It is your affiant’s belief the scaffolding pictured in Figure 4 below is the scaffolding that was attached to the U.S. Capitol building on January 6, 2021.

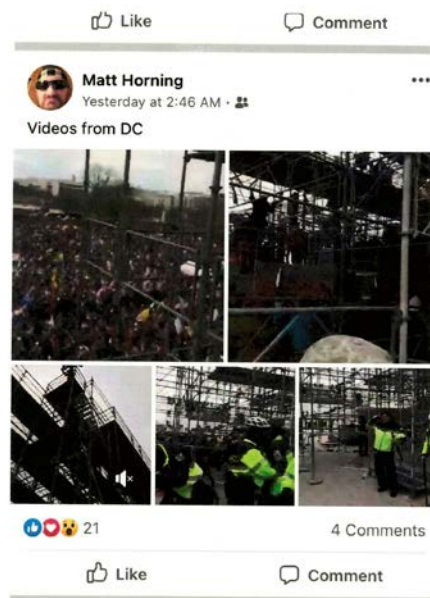


Figure 4

A fourth screenshot that W-2 provided to the FBI from the “Matt Horning” Facebook account was a post depicting a text conversation between an individual named Matt Horning and another Facebook user. The other Facebook user asked Horning “I’m curious why you went to DC: just a show or actual intent to violently overthrow the election? Legit question.” Horning replies “3 reasons... to be there when history happens. To participate in anarchy. To smoke weed in government buildings.....The real reason was to intimidate congress.. they have a 9% approval

rating. We accomplished that. Maybe they will work on that because they know we could have got them and have mercy.” (see Figure 5)

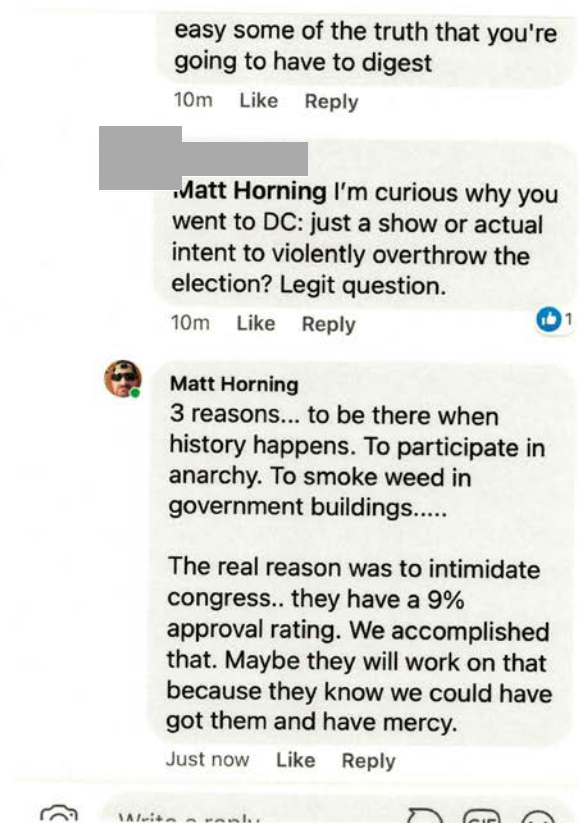


Figure 5

On January 8, 2021, a third witness (W-3) contacted the FBI and stated an individual named Matt Horning posted videos and pictures of himself inside the U.S. Capitol on January 6, 2021 on the “Matt Horning” Facebook account. W-3 provided the FBI with a screenshot of a post from the “Matt Horning” Facebook account commenting on the events of January 6, 2021. Specifically, in response to a Facebook post about the events of January 6, 2021, at the U.S. Capitol, Horning responded indicating he had been there and was inside the U.S. Capitol (see Figure 6).

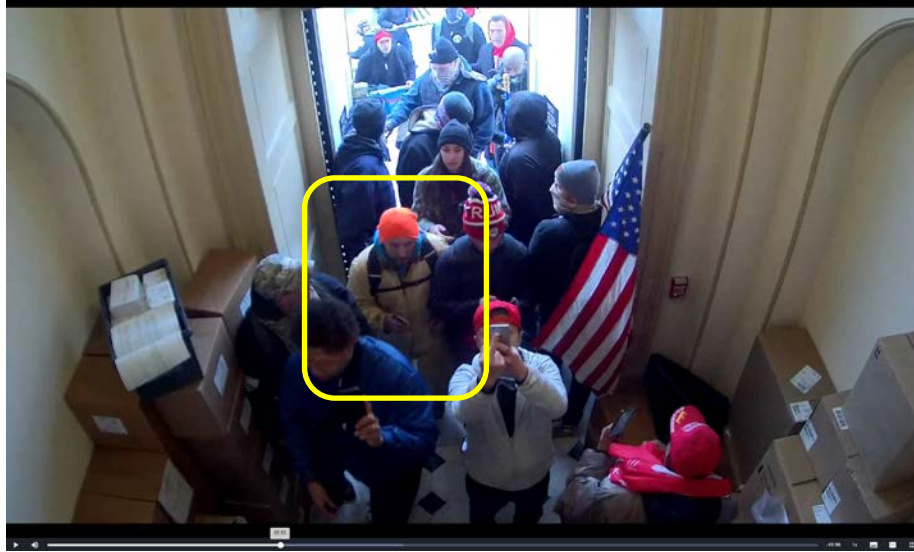


*Figure 6*

Your affiant has compared the individual pictured in the above figures to law enforcement records of James Matthew Horning that appear to show the same unique facial features between Horning and the individual depicted in the above figures. Based on that review, the above social media posts, and tips received by the FBI, it is your affiant's belief that the individual wearing the bright orange beanie style hat and turquoise colored bandana around his neck is James Matthew Horning.

At approximately 2:45 PM on January 6, 2021, a USCP security camera located just inside the Upper West Terrace door at the U.S. Capitol captured Horning, seen wearing a light brown coverall, a bright orange beanie style hat, a turquoise colored bandana around his neck, and a dark colored backpack, entering the U.S. Capitol (see Figure 8).





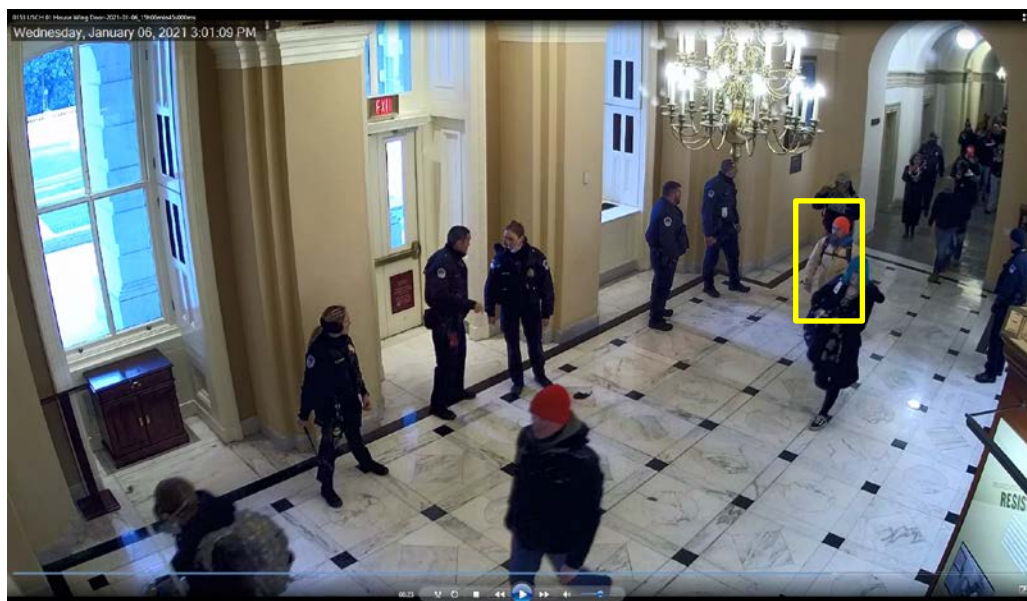
*Figure 8*

At approximately 2:51 PM on January 6, 2021, a USCP security camera captured Horning inside the U.S Capitol by the Senate Wing door (see Figure 9).



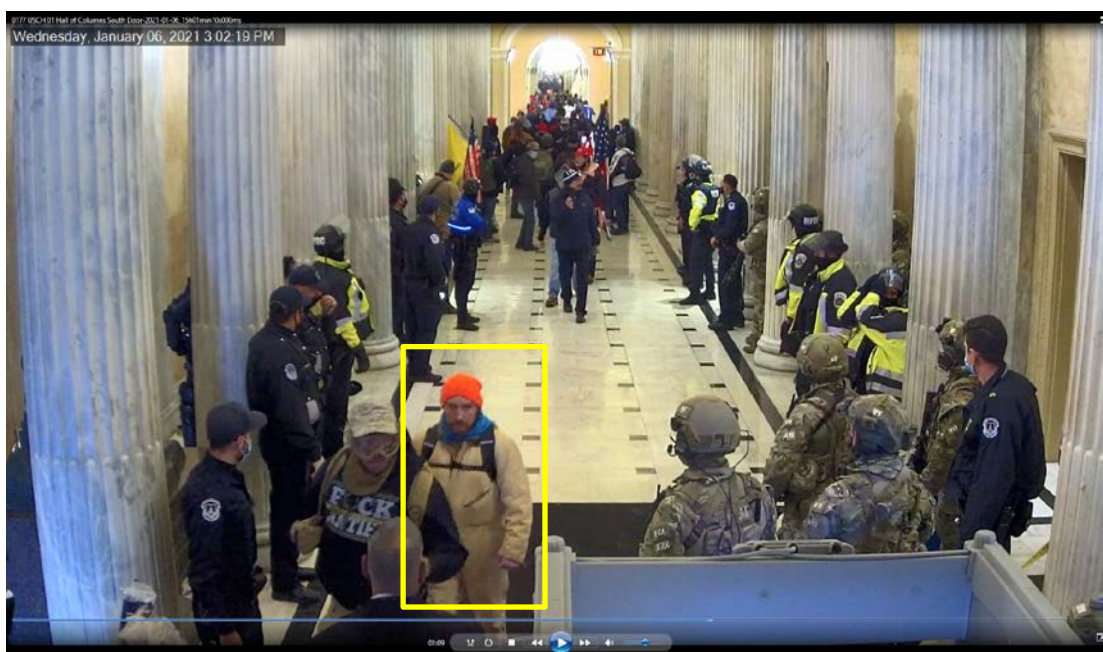
*Figure 9*

At approximately 3:01 PM on January 6, 2021, Horning is seen on USCP security footage by the House Wing Door inside the U.S. Capitol (see Figure 10).



*Figure 10*

Lastly, at approximately 3:02 PM on January 6, 2021, Horning is seen on USCP security footage by the Hall of Columns South inside the U.S. Capitol (see Figure 11).



*Figure 11*

Based on the foregoing, your affiant submits that there is probable cause to believe that James Matthew Horning violated 18 U.S.C. § 1752(a)(1) and (2), which makes it a crime to (1) knowingly enter or remain in any restricted building or grounds without lawful authority to do; and (2) knowingly, and with intent to impede or disrupt the orderly conduct of Government business or official functions, engage in disorderly or disruptive conduct in, or within such



proximity to, any restricted building or grounds when, or so that, such conduct, in fact, impedes or disrupts the orderly conduct of Government business or official functions; or attempts or conspires to do so. For purposes of Section 1752 of Title 18, a “restricted building” includes a posted, cordoned off, or otherwise restricted area of a building or grounds where the President or other person protected by the Secret Service, including the Vice President, is or will be temporarily visiting; or any building or grounds so restricted in conjunction with an event designated as a special event of national significance.

Your affiant submits there is also probable cause to believe that James Matthew Horning violated 40 U.S.C. § 5104(e)(2)(D) and (G), which makes it a crime to willfully and knowingly (D) utter loud, threatening, or abusive language, or engage in disorderly or disruptive conduct, at any place in the Grounds or in any of the Capitol Buildings with the intent to impede, disrupt, or disturb the orderly conduct of a session of Congress or either House of Congress, or the orderly conduct in that building of a hearing before, or any deliberations of, a committee of Congress or either House of Congress; and (G) parade, demonstrate, or picket in any of the Capitol Buildings.

Finally, your affiant submits there is probable cause to believe that James Matthew Horning violated 18 U.S.C. § 1512(c)(2), which makes it a crime to obstruct, influence, or impede any official proceeding, or attempt to do so. Under 18 U.S.C. § 1515, congressional proceedings are official proceedings.



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Brandon Merriman  
Special Agent  
Federal Bureau of Investigation

Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1  
by telephone, this 24<sup>th</sup> day of February 2021.

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ZIA M. FARUQUI  
U.S. MAGISTRATE JUDGE